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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

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# No. 658

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LAMBIRIS SKIRIOTES,

*Appellant,*

*vs.*

THE STATE OF FLORIDA.

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

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## STATEMENT AS TO JURISDICTION.

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W. B. DICKENSON, SR.,
W. B. DICKENSON, JR.,
*Counsel for Appellants.*

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# IN THE SUPREME COURT OF THE STATE OF FLORIDA

LAMBIRIS SKIRIOTES,

*Appellant,*

*vs.*

THE STATE OF FLORIDA,

*Appellee.*

WRIT OF ERROR IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PINELLAS COUNTY.

## JURISDICTIONAL STATEMENTS.

Comes now Lambiris Skiriotes and respectfully shows Your Honors that prior to the Act of Congress of January 31, 1928, being Chapter 14, 45 Stat. 54 he was under the provisions of the Act of Congress of February 13, 1925, being Chapter 229, 43 Stat. 936, entitled to a writ of error, under the provisions of Section 237, Paragraph A, in the Supreme Court of the United States in this cause; said section and paragraph providing:

> "A final judgment or decree in any suit in the highest court of the State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity, or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme

Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court in which it was removed by the writ."

The Act of Congress of January 31, 1928, being Chapter 14, 45 Stat. 54, provides in Section One, as follows:

"That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

The Act of Congress of April 26, 1928, being Chapter 440, 45 Stat. 466, Section 2, provides:

"That the Statute regulating the right to writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and invoking such relief, including the provisions relating to costs, supersedeas and mandate shall be applicable to the appeal which the preceding section substitutes for a writ of error."

The statute of the State of Florida, the validity of which is involved in this litigation, was originally Section 4 of Chapter 7389, Laws of Florida, enacted by the Legislature of 1917, which said law was carried forward and re-enacted as Section 8087, Compiled General Laws of the State of Florida, adopted in 1927, which is set forth in the Compiled General Laws in the following language:

"8087. (5846.) Diving suits, helmets, etc., used by deep sea divers, prohibited.—It shall be unlawful for any person, persons, firm or corporation to maintain and use for the purpose of catching or taking commercial sponges from the Gulf of Mexico, or the Straits of Florida or other waters within the territorial limits

of the State of Florida, diving suits, helmets or other apparatus used by deep sea divers.

Anyone violating any of the provisions of this section shall be fined in the sum not exceeding five hundred dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment."

It will be noted that the Act does not define "territorial limits of the State of Florida". It is, therefore, necessary to refer to the Constitution of the State of Florida, adopted in 1885, which will be found in Volume 5 of the Compiled General Laws of Florida, adopted in 1927, at pages 4239 to 4466 inclusive, together with all amendments to the Constitution now in force.

Article One of the said Constitution fixing the boundaries of the State of Florida is in the following language:

"The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the River Perdido; from thence up the middle of said river to where it intersects the South boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee River; thence down the middle of said river to its confluence with the Flint River; thence straight to the head of the St. Mary's River; thence down the middle of said river to the Atlantic Ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido River; thence to the place of beginning.".

We call the Court's attention to the fact that there is no statute in Florida fixing the boundaries of the State, and therefore, the above section of the Constitution will have to be relied upon for that purpose.

The date of the judgment of the Supreme Court of the State of Florida which this appeal seeks to have the Supreme Court of the United States review in this proceeding is September 6, 1940, a copy of which judgment is hereto attached and marked Exhibit "A", reference thereto being prayed as often as may be necessary, the same being made a part of this statement as fully and completely as though set out in *haec verba.*

This is an appeal from the final judgment of the Supreme Court of the State of Florida, and in compliance with Paragraph One of Rule 12 of the Revised Rules of the Supreme Court of the United States, we give to the Court the following information:

On January 20, 1940, Henry S. Baynard, Prosecuting Attorney of the County of Pinellas, State of Florida, filed an information in the County Court of Pinellas County, Florida, charging that Lambiris Skiriotes on the 8th day of March, 1938, knowingly, willfully and unlawfully maintained and used for the purpose of catching or taking commercial sponges from the Gulf of Mexico within the territorial limits of the State of Florida, to-wit, at a point more than one marine league from mean low tide on the West shore line of the State of Florida and southwest of Anclote Key and northwest of Hog Island and within three marine leagues of mean low tide on the West shore line of the State of Florida at a point approximately two marine leagues from mean low tide on the West shore line of the State of Florida and within the territorial limits of the County of Pinellas, a diving suit, helmet, and other apparatus used by deep-sea divers and did then and there catch or take commercial sponges from the Gulf of Mexico in violation of the provisions of Section 4 of Chapter 7389, Laws of Florida, enacted in 1917, and re-enacted as Section 8087, Compiled General Laws of Florida, adopted in 1927. A true and correct copy of the Information will be found in the

Transcript of Record at page 2, the same being made a part of this statement by reference.

To the said Information Lambiris Skiriotes, through his counsel, filed a Motion to Quash the said information upon the following grounds, to-wit:

1. Because the Information wholly fails to charge this defendant with the violation of any valid statute or law of the State of Florida, but on the contrary shows upon its fact that this defendant could not under the allegations of the Indictment be held guilty of violation of any valid law of the State of Florida, in this, the said Information charges that this defendant at a point more than one marine league from mean low tide on the West shore line of the State of Florida at a place approximately two marine leagues from shore was using diving apparatus commonly used by deep-sea divers for the purpose of taking or catching commercial sponges from the Gulf of Mexico; that the said place and point charged in the Information is outside of the territorial limits of the United States of America, and therefore necessarily outside of the territorial limits of the State of Florida, which obviously could not extend outside the territorial limits of the United States; that Section 4 of Chapter 7389, Laws of Florida enacted by the Legislature of Florida of 1917 and re-enacted as Section 8087, Compiled General Laws of Florida, adopted in 1927, under which the Information was filed, is invalid, unenforceable, null and void by reason of the fact that the said Act is in violation of the provisions of the Constitution of the United States now in force, to-wit: Section One of Article 14, originally adopted as the Fourteenth Amendment to the Constitution of the United States.

2. The said statute of the State of Florida under which the Information was filed violates the provisions of Article 6 of the Constitution of the United States of America.

3. The said law of the State of Florida under which the Information was filed in this cause violates Article One, Section 10, Paragraph One, of the Constitution of the United States of America.

4. The said law of the State of Florida under which the Information was filed violates Article 2, Section 2, Clause 2, of the Constitution of the United States of America.

5. The law of the State of Florida under which the said Information was filed violates Article One, Section 10, Paragraph 3, of the Constitution of the United States of America.

6. The law of the State of Florida under which the Information was filed against this defendant is null and void in that it violates the treaty provisions of the United States of America in the following respects and following treaties, to-wit:

The treaty entered into between the United States of America and Spain and designated a treaty of amity, settlement, and limits, which was signed at Washington, February 22, 1819; ratification of the same being advised by the Senate, February 19, 1821; same being ratified by the President, February 22, 1821; the same being ratified by Spain, October 24, 1820; ratifications exchanged at Washington, D. C. February 22, 1821; and proclaimed by the President on February 22, 1821; and the same being the treaty under which the United States acquired from Spain the State of Florida, which said treaty conveyed to the United States only the uplands of the Peninsular of Florida, together with certain islands lying adjacent thereto, and fixed the boundaries of the State of Florida at mean low tide on both the Atlantic Ocean and the Gulf Coast of the State. 8 Stat. 254

Treaty Series, No. 685. Convention between the United States and Great Britain—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, January 23, 1924; Ratification advised by the Senate, March 13, 1924; Ratified by the President, March 21, 1924; Ratified by Great Britain, April 30, 1924; Ratifications exchanged at Wash-

ington, May 22, 1924; Proclaimed, May 22, 1924. 43 Stat. 1761

Treaty Series, No. 694. Convention between the United States and Germany—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 19, 1924; Ratification advised by the Senate, May 26, 1924; Ratified by the President, August 9, 1924; Ratified by Germany, July 8, 1924; Ratifications exchanged at Washington, August 11, 1924; Proclaimed, August 11, 1924. 43 Stat. 1815

Treaty Series, No. 693. Convention between the United States and Denmark—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 29, 1924; Ratification advised by the Senate, June 3, 1924; Ratified by the President, July 11, 1924; Ratified by Denmark, July 8, 1924; Ratifications exchanged at Washington, July 25, 1924; Proclaimed July 25, 1924. 43 Stat. 1809

Treaty Series, No. 702. Convention between the United States and Italy—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, June 3, 1924; Ratification advised by the Senate, June 4, 1924; Ratified by the President, October 16, 1924; Ratified by Italy, July 7, 1924; Ratifications exchanged at Washington, October 22, 1924; Proclaimed, October 22, 1924. 43 Stat. 1844

Treaty Series, No. 689. Convention between the United States and Norway—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 24, 1924; Ratification advised by the Senate, May 31, 1924; Ratified by the President, June 20, 1924; Ratified by Norway, June 20, 1924; Ratifications exchanged at Washington, July 2, 1924; Proclaimed, July 2, 1924. 43 Stat. 1772

Treaty Series, No. 698. Convention between the United States and Sweden—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 22, 1924; Ratification advised by the Senate, May 26, 1924; Ratified by the President, August 15, 1924; Ratified by Sweden, June 13, 1924; Ratifications exchanged at Washington, August 18, 1924; Proclaimed, August 18, 1924. 43 Stat. 1830

Treaty Series, No. 712. Convention between the United States and The Netherlands—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, August 21, 1924; Ratification advised by the Senate, December 10, 1924; Ratified by the President, February 26, 1925; Ratified by The Netherlands, March 31, 1925; Ratifications exchanged at Washington, April 8, 1925; Proclaimed April 8, 1925. 44 Stat. 2013

Treaty Series, No. 707. Convention between the United States and Panama—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, June 6, 1924; Ratification advised by the Senate, December 10, 1924; Ratified by the President, January 15, 1925; Ratified by Panama, December 30, 1924; Ratifications exchanged at Washington, January 19, 1925; Proclaimed, January 19, 1925. 43 Stat. 1875

Treaty Series, No. 749. Convention between the United States and Spain—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, February 10, 1926; Ratification advised by the Senate, March 3, 1926; Ratified by the President, March 30, 1926; Ratified by Spain, July 20, 1926; Ratifications exchanged at Washington November 17, 1926; Proclaimed, November 17, 1926. 44 Stat. 2465

Treaty Series, No. 738. Convention between the United States and Cuba—Prevention of Smuggling of Intoxicating Liquors; Signed at Habana, March 4, 1926; Ratification advised by the Senate, April 9, 1926; Ratified by the President, April 15, 1926; Ratified by Cuba, June 17, 1926; Ratifications exchanged at Habana, June 18, 1926; Proclaimed, June 19, 1926. 44 Stat. 2395

Treaty Series, No. 755. Convention between the United States and France—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, June 30, 1924; Ratification advised by the Senate, December 12, 1924; (Legislative Day of December 10, 1924) Ratified by the President, December 30, 1924; Ratified by France, March 1, 1927; Ratifications exchanged at Washington, March 12, 1927; Proclaimed, March 12, 1927. 45 Stat. 2403

Treaty Series, No. 829. Prevention of Smuggling of Intoxicating Liquors—Convention between the United States of America and Chile; Signed at Washington, May 27, 1930; Ratification advised by the Senate of the United States, June 28, 1930; Ratified by the President of the United States, July 21, 1930; Ratified by Chile, October 2, 1930; Ratifications exchanged at Washington, November 25, 1930; Proclaimed by the President of the United States, November 26, 1930. 46 Stat. 2852

Treaty Series, No. 772. Convention between the United States and Greece—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, April 25, 1928; Ratification advised by the Senate, May 25, 1928; (Legislative Day of May 3, 1928); Ratified by the President, June 11, 1928; Ratified by Greece, January 8, 1929; Ratifications exchanged at Washington, February 18, 1929; Proclaimed, February 18, 1929. 45 Stat. 2736.

Treaty Series, No. 807. Convention between the United States and Japan—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 31, 1928; Ratification advised by the Senate, January 26, 1929; Ratified by the President, January 30, 1929; Ratified by Japan, November 22, 1929; Ratifications exchanged at Washington, January 16, 1930; Proclaimed January 16, 1930. 46 Stat. 2446.

Treaty Series, No. 759. Convention between the United States and Belgium—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, December 9, 1925; Ratification advised by the Senate, March 3, 1926; Ratified by the President, March 30, 1926; Ratified by Belgium, December 5, 1927; Ratification exchanged at Washington, January 11, 1928; Proclaimed, January 11, 1928. 45 Stat. 2456.

Treaty Series, No. 821. Prevention of Smuggling of Intoxicating Liquors—Convention between the United States of America and Poland; Signed at Washington, June 19, 1930; Ratification advised by the Senate of the United States, June 28, 1930; Ratified by the President of the

United States, July 11, 1930; Ratified by Poland, August 1, 1930; Ratifications exchanged at Warsaw, August 2, 1930; Proclaimed by the President of the United States, August 8, 1930. 46 Stat. 2773.

Each of the foregoing treaties in express terms fixes the international boundary of the United States at three marine miles or one marine league measured from the low-water mark on the mainland (see Agreed Statement of Facts, at pages 40-45 of the Record).

7. The law of the State of Florida under which the Information was filed against this defendant in this cause violates the decisions of the Political and Executive Department of the Federal Government on the question of what is and constitutes the extreme limits of the territorial boundaries of the United States of America, as shown by the Report of the 1929 Conference at Geneva of the League of Nations, issued by the Publications Department of the League of Nations "Conference for the Codification of International Law", Tome II.—Eaux Territoriales, wherein it is shown that on November 8, 1793, Mr. Jefferson, then Secretary of State, wrote a letter to the British Minister at Washington, in which he said that the President had instructed him to say that officers acting under his authority to consider those heretofore given them as restrained for the present to the distance of one sea league or three geographical miles from the seashores. 1 Moore's Digest of International Law, page 702; League of Nations Conference for the Codification of International Law, Vol. 2, page 129.

On the same date Mr. Jefferson addressed to the French Minister to the United States, a note to the same effect. (1 American State Papers, Foreign Relations, 183).

On September 2, 1796, Mr. Pickering, Secretary of State, addressed to Lieutenant-Governor of Virginia as follows:

"Our jurisdiction * * * has been fixed to extend three geographical miles from our shores."

1 Moore's Digest of International Law, page 704, League of Nations, Vol. 2, page 129.

On February 3rd, 1807, Mr. Madison, Secretary of State, addressed Messrs. Monroe and Pinkney, Ministers to England, as follows:

"There could surely be no pretext for allowing less than a marine league from the shore, that being the narrowest allowance found in any of the authorities on the law of nations."

1 Moore's Digest of International Law, page 705, League of Nations, Vol. 2, page 129.

On December 16, 1862, Mr. Seward, Secretary of State, addressed a letter to Mr. M. Tassara, Spanish Minister, stating that the United States territory extended one marine league or three miles from the coastline. (1 Moore's Digest of International Law, pages 706-707; League of Nations Conference for the Codification of International Law, Vol. 2, page 129-130.)

On May 28, 1886, Mr. Bayard, Secretary of State, wrote Mr. Manning, Secretary of the Treasury, in which he said:

"The position of this department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles from low-water mark, etc."

1 Wharton's Digest of International Law, page 107; 1 Moore's Digest of International Law, page 720, League of Nations, Vol. 2, page 130.

On July 3, 1902, Mr. Herbert H. D. Pierce, Agent of the United States in the C. H. White case, Russian arbitration,

in reply to the question asked by Mr. T. M. C. Asser, arbitrator, said:

> "The Government of the United States claims, neither in Bering Sea nor in its other bordering waters, an extent of jurisdiction greater than a marine league from its shores, etc."
>
> U. S. Foreign Relations 1902, Appendix 1, pages 440, 461; League of Nations Conference for the Codification of International Law, Vol. 2, page 130.

On January 23, 1904, in an address to Mr. Chief Justice Charles E. Hughes, of the Supreme Court of the United States, then Secretary of State, reprinted in 18 Am. Journal of International Law, pages 229-230-231, said:

> "The Government of the United States has repeatedly asserted that the limits of territorial waters extend to three marine miles outward from the coastline. This has been asserted by our Government in making claims upon other Governments * * *
>
> "It is quite apparent that this Government is not in a position to maintain that its territorial waters extend beyond the three mile limit."
>
> League of Nations Conference for the Codification of International Law, Vol. 2, page 130.

The above and foregoing Motion to Quash the Information against the Defendant was overruled and denied by the trial court, which court decided adversely to the Defendant in the following language:

> "The above and foregoing cause coming on to be heard and being argued by the attorneys for both parties, and the Court now being fully advised:
>
> It is thereupon considered, ordered and adjudged that the said Motion to Quash be and the same is hereby denied.

Dated this 26th day of January, A. D. 1940, in Chambers, at St. Petersburg, Florida.

Jack F. White
Judge of the Said Court."

The cause thereupon came on for trial and in order to save expense, and there being no dispute between the defense and the State as to the facts, the State and defendant waived the intervention of jury in writing and agreed to submit the same to the Court upon an agreed statement of facts, which agreed statement of facts and waiver of jury constitute the "Transcript of Testimony and Proceedings at the Trial of the Defendant" found in the record at pages 14 to 25; the pertinent part of which stipulation was that the Court at the time had before him all the treaties brought in question in this proceeding and also all of the papers and documents set forth in this proceeding, and that his attention was called to the provisions of the statute set forth above and of the constitution of the State of Florida, together with all of the provisions of the Constitution of the United States.

The stipulation further shows that on the 8th day of March, 1938, the defendant, who is by trade and occupation a deep-sea diver engaged in sponge fishery and being a resident of the Town of Tarpon Springs, Pinellas County, Florida, and being engaged in sponge fishing for a number of years, was arrested by Samuel Mickler, a Deputy Sheriff of Pinellas County, Florida, at a point in the Gulf of Mexico more than one marine league from the nearest shore line or adjacent island and within three marine leagues from mean low tide on the West shore line of the State of Florida at a point approximately two marine leagues from shore.

The trial court, upon this showing, entered his final judgment and sentence, a copy of which is hereto appended, marked Exhibit "B".

The defendant thereupon filed his Motion to Vacate and set aside the Verdict and Judgment of Conviction and Grant a New Trial, upon the following grounds:

1. Because the Information filed against the defendant charges the alleged offense to have been committed on the high seas beyond and outside of the jurisdiction of the Court.

2. Because the evidence clearly and conclusively establishes without controversy that the alleged offense with which this defendant was charged and convicted, if committed at all, was committed on the high seas beyond the territorial limits of Pinellas County, Florida, and beyond and outside of the jurisdiction of this court.

3. Because the evidence conclusively and without controversy shows that the alleged offense charged in the Information and of which this defendant was convicted, if committed at all, was committed on the high seas outside of and beyond the jurisdiction of the courts of the State of Florida.

The defendant also filed his Motion in Arrest of Judgment upon the following grounds, to-wit:

1. Because the Information filed against the defendant charges the alleged offense to have been committed on the high seas beyond and outside of the jurisdiction of the Court.

2. Because the evidence clearly and conclusively establishes without controversy—that the alleged offense with which this defendant was charged and convicted, if committed at all, was committed on the high seas beyond the territorial limits of Pinellas County, Florida, and beyond and outside of the jurisdiction of this Court.

3. Because the evidence conclusively and without controversy shows that the alleged offense charged in the In-

formation and of which this defendant was convicted, if committed at all, was committed on the high seas outside of and beyond the jurisdiction of the Courts of the State of Florida.

4. Because the Information as framed clearly shows that the offense alleged therein against this defendant and of which he was convicted, if committed at all, was committed on the high seas outside of and beyond the territorial limits of the United States of America, and of the County of Pinellas; and therefore, this Court has no jurisdiction of the alleged offense charged in the Information.

5. Because the Information charges no crime or offense to have been committed within the jurisdiction of this Court.

6. Because this Court is wholly without jurisdiction to hear, try and determine this cause.

The Judge of the said County Court of Pinellas County, Florida, on the 27th day of January, 1940, did overrule and deny the aforesaid Motion for New Trial and Motion in Arrest of Judgment, in the following language:

> "It is thereupon ordered and adjudged that the said Motion for New Trial filed in this cause by the said defendant, be, and the same is hereby denied.
>
> It is further ordered and adjudged that the Motion in Arrest of Judgment filed by the said Defendant in this cause, be, and the same is hereby denied.
>
> Done and ordered in Open Court at Clearwater, Pinellas County, Florida, this 27th day of January, A.D. 1940.
>
> JACK F. WHITE,
> *Judge of the Said Court.*"

The said Judge, on the 27th day of January, 1940, did then and there proceed to pass judgment and sentence upon

the defendant, Lambiris Skiriotes, in the following language, to-wit:

> "It is therefore the sentence of the law and the judgment and order of this court that you, Lambiris Skiriotes, for your said offense for which you now stand convicted, shall serve two (2) days in the County Jail of Pinellas County, Florida. It is further considered and ordered that you, Lambiris Skiriotes, shall also pay a fine of Fifty ($50.00) Dollars."

All of which will more fully appear by reference to the record in this cause, the pertinent parts of the proceedings involved in this litigation being herein set forth, and the pages not being available at this time we cannot specifically refer to the pages.

Under the provisions of Chapter 19554, Laws of Florida enacted at the session of the Legislature of Florida of 1939, Section 280 provides:

> "Section 280. Appeal Only Method of Review. Hereafter the only method of reviewing the proceedings in a prosecution by indictment or information, shall be by appeal. Writs of error as methods of review in criminal causes and writs of certiorari ad audendum are hereby abolished."

the defendant entered, filed and recorded his appeal, in the following language:

> "Comes now the above named defendant, Lambiris Skiriotes, and enters this his appeal in the above entitled cause from the judgment of conviction heretofore entered against this defendant in said cause and from the sentence imposed upon this defendant upon the said judgment of conviction, and makes the same returnable in the Circuit Court of the Sixth Judicial — of Florida, in and for Pinellas County, on the 29th day of March, A. D. 1940."

The appeal was perfected, briefed and argued before the Honorable John U. Bird, one of the Circuit Judges of the Sixth Judicial Circuit of the State of Florida, in and for Pinellas County, who, on the 30th day of April, 1940, entered in said cause his opinion and judgment specifically holding against the appellant, Lambiris Skiriotes, on each and every of the questions raised in the Motion to Quash the Indictment and in the Assignments of Error, which Assignments of Error will be found in the Transcript at pages 81 to 94, and said Assignments of Error being the same in substance as contained in the Motion to Quash the Information as grounds of the said motion. A true and correct copy of the judgment and order of the Circuit Court is hereto appended as Exhibit "C".

Upon the entry of the aforesaid Order of the Circuit Court, the defendant, being under the statutes of the State of Florida and the rules of practice of the courts of the State of Florida, entitled to bring the cause before the Supreme Court of the State of Florida by certiorari, made application within the time limited for such application to the Supreme Court of the State of Florida and filed therewith his brief in support of the same, and the Attorney-General of the State of Florida duly filed his brief; which said cause, upon the said application for certiorari and upon consideration of the questions involved, the Supreme Court of the State of Florida, on the 6th day of September, 1940, did enter its order affirming the judgment and decision of the Circuit Court, a true and correct copy of which opinion of the Supreme Court is hereto appended as Exhibit "A".

It is contended that the questions involved in this case are substantial for the following reasons, all of which reasons do not appear in the Transcript of Record but were and are known to all the courts and people of the State of Florida and the people generally throughout the United

States, and we assume that what is known by everyone who is well-informed is also known by the court.

First: The sponge industry has its headquarters at Tarpon Springs, Pinellas County, Florida, and the sponge fields are located exclusively in the Gulf of Mexico extending from close in shore to some forty miles from shore and in certain sections of the State even further. The industry produces many millions of dollars of commercial sponge every year. There are engaged in the sponge industry some seventy large diving boats that carry crews of from six to ten or twelve men. This industry gives employment to many hundreds of men and women and has done so for many years.

Second: There are two methods of taking sponge from the floor of the Gulf of Mexico. One class of people being what are commonly called in the industry "hookers". These people use long poles, perhaps thirty or thirty-five feet in length, with a three prong hook at the end. They go out in row boats and look through a glass-bottom bucket and hook these sponges from the floor of the Gulf of Mexico with these long poles. This is necessarily a slow process, not very remunerative and falls far short of meeting the demand for commercial sponge; and they are limited to shallow water.

The other sponge divers, of which Lambiris Skiriotes was one, take sponge from the floor of the Gulf of Mexico by the use of diving apparatus, in which method the diver goes down to the bottom and cuts the sponge loose and places the same in a sack and sends the sack up when full. These men go down to depths of one hundred and fifty to two hundred feet and work as far away from shore as thirty or thirty-five miles. The sponge beds normally are apparently inexhaustible.

Third. It is within the knowledge of everyone that approximately six or eight months prior to the arrest of

Lambiris Skiriotes the sponge beds in very deep water far out in the Gulf of Mexico were attacked by a fungus growth that practically depleted the sponge beds; the sponge fishing industry requested assistance from the United States Bureau of Fisheries in an attempt to save the sponge beds and the large industry if possible. Thereupon, the Bureau sent to Tarpon Springs, Florida, Dr. Paul S. Galtsowl of the United States Bureau of Fisheries, Washington, D. C., who made an investigation to determine if something could be done to relieve the situation, but apparently he was unable to find any means of coping with the situation, at least nothing so far has been accomplished toward that end. If the court desires a report from the United States Bureau of Fisheries the same could undoubtedly be made available.

Fourth. If the Court will take a map of the State of Florida and trace the boundaries, as attempted to be fixed by the Constitution of the State of Florida it will be apparent that there is an irreconcilable conflict between the Constitution of the State of Florida and the several treaties hereinbefore set forth, each and every of which said treaties contain a provision that the international boundary line shall be one marine league from mean low tide on the mainland and adjacent islands. The Court will further find that there is an irreconcilable conflict between the boundaries as fixed by the Constitution of Florida and the decisions and rulings of the executive and State departments of the United States government as set forth herein at pages twelve to fifteen inclusive, supra.

The Court will also find that there is a strip of water some fifty or sixty miles wide and approximately ninety to one hundred miles long, unbroken by the intervention or interposition of any island except along the Southern border of this strip; and that the men engaged in the sponge industry while diving are prohibited by the statute in ques-

tion in this cause and the boundaries as fixed by the Constitution of the State of Florida from using at any point within this wide field of open sea their diving apparatus for the purpose of taking sponge.

Fifth. That there is a substantial question involved in this: that under the said constitutional provision and law of the State of Florida a group of approximately four hundred men, operating approximately seventy-two large diving boats, carrying an average of about six men to the boat, as well as about one hundred men engaged in packing houses, and a large percentage of the population of Tarpon Springs, Florida, which is approximately four thousand, producing sufficient sponge so that in 1939 the gross sales of sponge through the sponge exchange totaled $1,035,553.86, (all of which will more fully appear by reference to the United States census of 1940), will be thrown out of employment and deprived of earning a livelihood, and one of the largest industries of the State of Florida, and the only industry of any importance in the Town of Tarpon Springs will be forced to retire from business by reason of the continuous wholesale arrest of men engaged in the industry whenever they come within nine nautical miles or three marine leagues from shore.

Sixth. There is a substantial question involved in this litigation affecting a large number of citizens of the United States, as set forth in the last paragraph, and their rights in the following respects: The boundaries of the State of Florida, as fixed by the Constitution of Florida of 1885, and the statute quoted herein taken together deny to the several hundred of individuals described in the last paragraph the equal protection of the laws guaranteed by Section One of Article 14 of the Constitution of the United States, in that the aforesaid group of people are not allowed or permitted to ply their occupation or avocation within that strip

of water lying more than three nautical miles or one marine league westward into the Gulf of Mexico from mean low tide on the mainland of Florida; but at the same time grants to that group of sponge fishers designated as "hookers" full and free right to ply their occupation or avocation at any place in the Gulf of Mexico up to the shore line of the uplands of the State of Florida.

The date of the judgment or decree of the Supreme Court of Florida sought to be reviewed by this appeal was that certain order and opinion filed September 6, 1940, in this cause in the Supreme Court of Florida.

The date upon which the application for appeal is presented to Chief Justice Glenn Terrell of the Supreme Court of Florida is November 19th, 1940.

**Citation of Cases Believed to Sustain the Jurisdiction of This Court.**

By reference to Article VI, Paragraph 2, of the Constitution of the United States, the following provision will appear:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

This provision of the Federal Constitution makes the Constitution of the United States and the treaties of the United States of equal legal force and effect and the supreme law of the land and makes the Federal Constitution and treaties of the United States equally binding upon all of the judges of the several States in addition to which the following language is significant; "anything in the

Constitution or laws of any State to the contrary notwithstanding".

The Supreme Court of the United States said:

> "This Constitution is the supreme law of the land, and no Act of Congress is of any validity which does not rest on authority conferred by that instrument."
> *U. S.* v. *Germaine* (Me. 1878), 99 U. S. 510, 25 L. Ed. 482.

See also:

*Choctaw Indians* (1870), 13 Op. Atty. Gen. 357, *Trial of Andrew Jackson,* 176.

The Supreme Court and other courts of the United States have on numerous occasions said:

> "The Constitutional laws of the United States extend and are paramount over all of the territory of every State and cannot be annulled or abridged in any degree by any law of the State or Constitution of the State."
> 1 *Sprague* (U. S.) 602, 30 Fed. Case No. 18273. Cited in Annotations of the Constitution, Article VI, Clause 2, U. S. C. A.
> *Gibbons* v. *Ogden* (N. Y. 1824), 9 Wheat. 210, 6 L. Ed. 23.
> *In re Metzger* (D. C. N. Y. 1847), 5 N. Y. Leg. Obs. 83, 17 Fed. Cas. 9511.
> *Turner* v. *Baptist Missionary Union* (C. C. Mich. 1852), 5 McLean (U. S.) 344, 24 Fed. Cas. No. 14251.
> *El Paso etc. R. Co.* v. *Guiterez* (Tex. 1909), 215 U. S. 87, 30 S. Ct. 21, 54 L. Ed. 106.
> *U. S.* v. *Farris* (D. C. Cal. 1927), 19 Fed. (2d) 925.

The United States Supreme Court has also said:

> "It must always be borne in mind that the Constitution, laws and treaties of the United States are as much a part of the law of every state as its own local

laws and constitution. • • • This is a fundamental principle in our system of complex national polity."

*Hauenstein* v. *Lynham* (Va. 1879), 100 U. S. 490, 25 L. Ed. 628.

The Supreme Court of Florida has recognized this principle as shown in the following language:

"The Constitution of the United States within its limited sphere is the supreme law of the land and it is the duty of all officials whether legislative, judicial, executive, administrative or ministerial to so perform every official act as not to violate the constitutional provisions."

*Montgomery* v. *State* (1908), 55 Fla. 97, 45 So. 879.

The Supreme Court of the United States has also held:

"Where a state law is assailed as repugnant to the Constitution of the United States, and on its face such Act is seemingly within the power of the state to adopt, but its necessary effect and operation is to usurp a power granted by the Constitution to the Government of the United States, it must follow, from the paramount nature of the Constitution of the United States, that the Act is void. In such a case the result of the test of necessary operation and effect is to demonstrate the want of power, because of the controlling nature of the limitations imposed on the states by the Constitution of the United States."

*McCray* v. *U. S.* (Ohio 1904), 195 U. S. 60, 24 S. Ct. 769, 49 L. Ed. 78, 1 Ann. Cas. 561.

See also:

*Northern Securities Co.* v. *U. S.* (Minn. 1904), 193 U. S. 344, 24 S. Ct. 436, 48 L. Ed. 679.

*Ex parte Siebold* (Md. 1879), 100 U. S. 398, 25 L. Ed. 717.

*New York* v. *Tax Com'rs.* (N. Y. 1862), 2 Black 632, 18 L. Ed. 451.

*Cohen* v. *Virginia* (Va. 1821), 6 Wheat. 381, 5 L. Ed. 257.
*M'Culloch* v. *Maryland* (Md. 1819), 4 Wheat. 405, 4 L. Ed. 579.
*Lick* v. *Faulkner* (1864), 25 Cal. 418.

The Supreme Court of the United States has also held:

"By the Constitution a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either, but, if the two are inconsistent, the one last in date will control the other; provided, always, the stipulation of the treaty on the subject is self-executing."

*Whitney* v. *Robertson* (N. Y. 1888), 124 U. S. 194, 8 S. Ct. 456, 31 L. Ed. 386.

See also:

*Rainey* v. *U. S.* (N. Y. 1914), 232 U. S. 310, 34 S. Ct. 429, 58 L. Ed. 617.
*U. S.* v. *Lee Yen Tai* (1902), 185 U. S. 220, 22 S. Ct. 629, 46 L. Ed. 878.
*Horner* v. *U. S.* (N. Y. 1892), 143 U. S. 570, 12 S. Ct. 522, 36 L. Ed. 266.
*In re Ah Lung* (C. C. Cal. 1883), 18 F. 28, 29.
*Ex parte Wong Gar Wah* (C. C. A. Cal. 1927) 18 F. (2d) 250, certiorari denied (1927), 48 S. Ct. 21, 72 L. Ed. —.

The United States Supreme Court also has said:

"A treaty is in its nature a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial; but is carried

into execution by the sovereign power of the respective parties to the instrument. In the United States a different principle is established. Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provisions. But when the terms of the stipulation import a contract, when either of the parties engage to perform a particular act, the treaty addresses itself to the political, not the judicial department, and the legislature must execute the contract before it can become a rule for the court."

*Foster* v. *Neilson* (La. 1829), 2 Pet. 313, 7 L. Ed. 415.

See also:

*Chinese Exclusion Case* (Cal. 1889) 130 U. S. 600, 9 S. Ct. 623, 32 L. Ed. 1068, affirming (C. C. 1888) 36 F. 431.

*Chew Heong* v. *U. S.* (C. C. Cal. 1884), 112 U. S. 540 5 S. Ct. 255, 28 L. Ed. 770.

*In re Ah Lung* (C. C. Cal. 1883), 18 F. 28, 29.

The Court has also held:

"A treaty may supersede a prior Act of Congress, and an Act of Congress may supersede a prior treaty."

*Cherokee Tobacco* (Ark. 1870), 11 Wall. 621, 20 L. Ed. 227.

See also:

*Alvarez y. Sanchez* v. *U. S.* (Ct. Cl. 1910), 216 U. S. 167, 30 S. Ct. 361, 54 L. Ed. 432.

Again speaking of the force and effect of a treaty of the United States, it has been said:

"A treaty, assuming it to be made conformably to the Constitution in substance and form, has the effect

of repealing all preceding federal law in conflict with it, whether in written, as law of nations, or admiralty and common law, or written, as Acts of Congress. Copyright Convention with Great Britain (1854), 6 Op. Atty. Gen. 293."

The Supreme Court of the United States also said:

"When treaty rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute. Head Money Cases, (N. Y. 1884) 112 U. S. 598, 5 S. Ct. 247, 28 L. Ed. 798, affirming (C. C. 1883) 18 F. 135. See also In re Metzger (D. C. N. Y. 1847) 5 N. Y. Leg. Obs. 83, 17 Fed. Cas. No. 9511."

One of the most conclusive cases on the question involved in this case was the case of *Arthur Manchester* v. *The Commonwealth of Massachusetts,* which originated in the State Courts of Massachusetts, and from there by appeal went to the Supreme Court of the United States, and is reported in U. S. Supreme Court Reports, Vol. 139 at page 240, 6 Fed. 159, in which case the Court said:

"Within what are recognized by the law of nations as the territorial limits of States, a state can define its boundaries on the sea and the boundaries of its counties; Massachusetts can include Buzzard's Bay within the limits of its counties."

The Court further said:

"We think it must be regarded as established that, as between nations, the minimum limit of the territorial jurisdiction of a nation over tidewaters is a marine league from its coast; that bays wholly within its territory not exceeding two marine leagues in width at the mouth are within this limit."

The Court further said:

"A state can control fishing to the extent of one marine league from its shores."

"Within what is recognized by the law of nations for a State's territorial limits, the State can regulate its boundaries."

Manchester *v.* Commonwealth, 139 U. S. 240, 258, 35 L. Ed. 159, 11 S. Ct. 559.

The Court held in this case conclusively that the State has the right of control of tide-waters only one marine league from shore and could not even control Buzzard's Bay lying wholly within the limits of the State except for the fact that the mouth of Buzzard's Bay was less than two marine leagues in width.

The same holding was made with reference to Bering Sea in the following language:

"An award restricting to a marine league exclusive jurisdiction over Bering Sea was held binding."

The La Ninfa, 75 Fed. 513, 21 C. C. A. 434.

It was also held:

"The jurisdiction of a nation extends into the sea one marine league."

The Marjorie Bachman, 4 F. (2d) 405;
U. S. *v.* Bevans, 3 Wheaton 336, 4 L. Ed. 404.

Mr. Justice Fields speaking for the Court said:

"All the writers upon public law agree that every nation has exclusive jurisdiction to the distance of a cannon shot, or marine league, over the waters adjacent to its shores, (Bynk. Qu. Pub. Uris. 61; 1 Azuni, (Mar. Law) 204; Par. 15; Id. p. 185, par. 4) and this doctrine has been recognized by the Supreme Court of the United States. (Church *v.* Hubbart) 2 Cranch (6 U. S.) 187, 231. Indeed such waters are considered as a part of the territory of the sovereign."

The Ann, 1 Fed. Cas. No. 397.

The Court has also said:

"Various meanings are sought to be attributed to the term 'territory' in the phrase, 'The United States

and all territory subject to the jurisdiction thereof'. We are of the opinion that it means the regional areas —of land and adjacent waters—over which the United States claims and exercises dominion and control as a sovereign power. The immediate context and the purport of the entire section, show that the term is used in a physical, and not a metaphorical, sense—that it refers to areas or districts having fixity of location and recognized boundaries. See United States *v.* Bevans, 3 Wheat. 336, 339, 4 L. Ed. 404, 417."

"It is now settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays, and other inclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league, or three geographical miles. Church *v.* Hubbart, 2 Cranch. 187, 234, 2 L. Ed. 249, 264; The Ann, 1 Gall. 61, Fed. Cas. No. 397; United States *v.* Smiley, 6 Sawy. 640, Fed. Cas. No. 16317; Manchester *v.* Massachusetts, 139 U. S. 240, 257, 258, 35 L. Ed. 159, 164, 11 Sup. Ct. Rep. 559; Louisiana *v.* Mississippi, 202 U. S. 1, 52, 50 L. Ed. 913, 931, 26 Sup. Ct. Rep. 408, 571; 1 Kent, Com. 12th Ed. 29; 1 Moore, (123) International Law Dig. par. 145; 1 Hyde International Law, par. 141, 142, 154; Wilson, International Law, 8th ed. par. 54; Westlake, International Law, 2nd ed. pp. 187, et seq.; Wheaton, International, 5th Eng. ed. (Phillipson) p. 282; 1 Oppenheim, International Law, 3d ed. par. 185-189, 252. This, we hold, is the territory which the Amendment designates as its field of operation; and the designation is not of a part of this territory but of 'all' of it."

Cunard S. S. Co. *v.* Mellon, 262 U. S. 100, (1923).

We are familiar with the case of *Arch, et al.* v. *United States,* decided by this Court May 12, 1926, being Case No. 4498 and involving a libel growing out of a violation of the customs duty. The Court sustained the seizure of the vessel without the procuring of a search warrant for the reason

that the parties had been guilty of a violation of the Tariff Act of September 21, 1922, paragraph 581. This Court did, however, in the opinion, say:

> "If her intention had been only to anchor without the jurisdictional of limits and there to sell to chance customers, the case presented would have been different." Burns *v.* U. S., 296 Fed. 468; Romano *v.* U. S., 9th F. (2d) 522.

In this case the action was taken against the vessel by the United States Government for the purpose of enforcing and protecting the revenues of the Government and under an Act of Congress and also under the International Law, which has recognized the rights of nations for the protection of its revenues and to prevent smuggling, to search vessels at a distance beyond the territorial waters of the nation.

The United States Court has held:

> "A state bordering on the sea may extend its borders to length of one marine league from low-water mark into the sea. U. S. *v.* New Orleans Meadows Imp. Co., 173 Fed. 426."

W. B. Dickenson, Sr.,
W. B. Dickenson, Jr.,
*Counsel for Appellant.*

## EXHIBIT "A".

IN THE SUPREME COURT OF FLORIDA, JUNE TERM, A. D. 1940, EN BANC.

PINELLAS COUNTY.

LAMBIRIS SKIRIOTES, *Petitioner,*

*vs.*

THE STATE OF FLORIDA, *Respondent.*

**Opinion Filed September 6, 1940.**

Certiorari to Circuit Court, Pinellas County, John U. Bird, Judge.

W. B. Dickenson, Dickenson & Dickenson, for Petitioner; George Couper Gibbs, Attorney General, William Fisher, Jr., Assistant Attorney General, for Respondent.

TERRELL, *C. J.*:

Lambiris Skiriotes was tried and convicted in the County Court of Pinellas County for using diving apparatus in the taking of sponge from the Gulf of Mexico contrary to Section 8087, Compiled General Laws of 1927. His conviction was on appeal affirmed by the Circuit Court so he petitions this Court to review it by certiorari.

Three questions are urged for determination but all turn on that of whether the provisions of the Constitution of 1885 fixing the western boundary of Florida at three marine leagues (nine nautical miles) from the shore is violative of the Constitution of the United States, including treaties and executive orders made pursuant to the Federal Constitution.

There is no dispute about the facts. It is admitted that the alleged offense was committed within the State if the boundary as fixed by the Constitution of 1885 is controlling. The case was tried by the Court on waiver of jury and stipulation as to material facts. Petitioner contends that the marine boundary of the State is fixed by international law at one marine league from shore and that the offense was committed beyond this limit.

By the tenth amendment to the Federal Constitution the States reserved all rights and powers which they did not in terms surrender to the United States. In Manchester *v.* Massachusetts, 139 U. S. 240, 11 Sup. Ct. 559, 35 L. Ed. 159, the Supreme Court approved the doctrine that a State may determine its own marine boundaries provided it does not exceed the limits recognized by the law of nations. For the purpose of fixing marine boundaries in this country, the states may be considered as nations. As a practical matter, the marine boundary of a State may be fixed by the latter with the approval of Congress and may not be limited to one marine league.

At the time of the Revolution, each state was an independent nation and determined its marine boundary. Such was the practice of each state subsequently admitted to the Union. In the absence of affirmative action on this point the Supreme Court of the United States has generally assumed the sovereignty of the state to extend one marine league from shore. This distance was fixed because it was at the time considered to be the range of a cannon shot and that the state should be permitted to protect that distance from its shore. This distance has in many instances been increased within reason and we find nothing in the law of nations to forbid it.

The western boundary of Florida was fixed at three marine leagues from the main land by the Constitution of 1868. In June of the same year but after the adoption of the Constitution, Congress passed an act admitting Florida and other southern states to the Union, the said act making reference to the Constitution of 1868. The Constitution of 1885 repeated the boundary defined in the Constitution of 1868 and the latter has continued to be the boundary to the present.

The petitioner contends that the act of Congress readmitting Florida to the Union did not constitute an approval of the boundary but that if it did, such approval was subsequently withdrawn by treaties entered into between the United States and certain foreign countries including executive orders made by the President and the Cabinet, all of which referred to the boundary of the United States as three marine leagues from the mainland.

It is true that by international law, one marine league is generally considered the distance over which a nation has exclusive jurisdiction and such waters are considered as under the jurisdiction of the sovereign but it has never been determined that such limits were final. Treaties and legislative acts passed pursuant to the Constitution are clothed with equal dignity and by the Constitution are made the Supreme Law of the land. This of course presupposes that they relate to the same subject. The State of Florida was not a party to any of the treaties or executive orders relied on by petitioner and none of them had any reference to the boundary of Florida. Such as they did connote it was one marine league from shore.

Petitioner also contends that if Florida can extend its boundaries to three marine leagues from shore, then there is no limit to the extent they may be extended. The answer to this question is that such extensions must be approved by Congress and when done, its approval is final. We do not infer that any extension would be approved by Congress. Certainly no unreasonable extension or one that would transcend international law would be approved. In Jones *v.* United States, 137 U. S. 202, 11 Sup. Ct. 80, 34 L. Ed. 691, the Supreme Court held that the question of who is the sovereign de jure or de facto is a political rather than a judicial question. The Courts are bound by the legislative determination of such questions.

In support of this position, it may be pointed out that the boundaries of the sister states of Alabama, Mississippi, Louisiana, and Texas were fixed by their respective legislatures at the time of admission, some at three marine leagues from the shore, some at six and Louisiana at nine, yet all said boundaries were approved by acts of Congress in similar manner as that approving the boundary of Florida and some of them have been on the books more than one hundred years. A complete discussion of the boundary of Louisiana and Mississippi is found in Louisiana *v.* Mississippi, 202 U. S. 1, 26 Sup. Ct. 408, 50 L. Ed. 913.

Both parties to this cause rely on Manchester *v.* Massachusetts, and Louisiana *v.* Mississippi, *supra*, to support their contention. The direct question presented here was not raised in either one of these cases. In the former case

the Court held that as between nations, the minimum limit of the territorial jurisdiction of a nation over tide waters is a marine league from the coast and that a State may define its marine boundaries within these limits.

In the latter case, it was held that as between states long acquiescence in the assertion of a particular boundary and the exercise of sovereignty over the territory within it should be accepted as conclusive whatever the international rule may be in respect of acquisition by prescription of large tracts of country claimed by two states.

Since one marine league is considered by this line of cases as the "minimum" width of the marine belt and no maximum is prescribed all of the states referred to have gone on the theory that circumstances warranted a widening of their marine belt and have done so but in keeping with and to the extent that the range of artillery has been lengthened. If the range of a cannon shot controlled the width of the marine belt in the first instance, certainly it may be widened with length of the range. This procedure has been long acquiesced in was approved by Congress and is not prohibited by the Constitution. We are not convinced that it should be disturbed on the showing made.

From the decided cases, it appears that any state by approval of Congress has a right to fix its marine boundaries and that if fixed in reason, such right has never been questioned by Congress by any other nation or citizen thereof. Long acquiescence in a boundary so fixed concludes the question. Indiana *v.* Kentucky, 136 U. S. 479, 10 Sup. Ct. 1051, 34 L. Ed. 329; Maryland *v.* West Virginia, 217 U. S. 1, 30 Sup. Ct. 268, 54 L. Ed. 645; Pope *v.* Blanton, 10 Fed. Supp. 18; Lipscomb *v.* Gialourakis, 101 Fla. 1130, 133 So. 104; Cunningham *v.* Skiriotes, 101 F. (2d) 635.

It follows that the western boundary of Florida as defined in its Constitution at three marine leagues from shore is conclusive and being so by the agreed statement of facts, petitioner was guilty of violating Section 8087, Compiled General Laws of 1927, so the writ of certiorari is denied.

It is so ordered.

WHITFIELD, BROWN, BUFORD, CHAPMAN and THOMAS, J. J., concur.

**EXHIBIT "B",**

4449 Co. Cr.

STATE OF FLORIDA

*vs.*

LAMBIRIS SKIRIOTES.

Violation of Sec. 8087 C. G. L. of Florida Prohibiting the Use of Diving Apparatus in Taking Sponge.

The defendant, Lambiris Skiriotes, upon being caused to stand before the bar in custody of the Sheriff, was asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, and he answering nothing in bar or preclusion thereof, the Judge pronounced the following sentence, towit:

"You, Lambiris Skiriotes, having entered a plea of Nolle Contendre to the charges of violation of Section 8087 of the Compiled General Laws of Florida prohibiting the use of diving apparatus in taking sponge, the Court adjudges you to be guilty.

It is therefore the sentence of the law and the judgment and order of this Court that you, Lambiris Skiriotes, for your said offense for which you now stand convicted shall serve two (2) days in the County Jail of Pinellas County, Florida; It is further considered and ordered that you, Lambiris Skiriotes, shall also pay a fine of Fifty ($50.00) Dollars.

Thereupon the defendant was remanded to the custody of the Sheriff."

## EXHIBIT "C".

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PINELLAS COUNTY.

Min. Ct. Ct. 28, Page 3.

LAMBIRIS SKIRIOTES, *Appellant*,

*vs.*

THE STATE OF FLORIDA, *Appellee*.

Appeal from the ~~County Court of Pi~~nellas County, ~~F~~lorida.

This cause is before this Court on appeal from that certain judgment of conviction of the Appellant entered by the Judge of the County Court, in and for Pinellas County, Florida, on the 27th day of January, A. D. 1940, wherein and whereby the said Judge, who by stipulation acted without the intervention of a jury, found the defendant, Lambiris Skiriotes, guilty as charged in the Information.

And also on appeal from the Final Judgment and sentence of the defendant by the said Judge of the County Court, in and for Pinellas County, Florida, set forth at page 32 of the transcript, under which judgment and sentence the said Appellant, Lambiris Skiriotes, was by the Judge of the County Court of Pinellas County, Florida, sentenced to serve two days in the county jail of Pinellas County, Florida, and in addition thereto pay a fine of Fifty ($50.00) Dollars.

This Court, having inspected the record herein, finds, that this Court has jurisdiction of the parties and the subject matter and that the Appellant was convicted and sentenced under an Information filed by the Prosecuting Attorney for Pinellas County, Florida, under the provisions of Section 8087 of the Compiled General Laws of Florida, the said Section being a carrying forward of Section 4 of Chapter 7389, Laws of Florida of 1917.

The Court further finds that the said statute does not define what are and constitute the "territorial waters of

the State of Florida", but that the Constitution of 1885, which is the present constitution of the State of Florida, undertakes to define what constitutes the territorial limits of the State of Florida and that the constitutional provision places the western limit of the State of Florida off the West shore of Pinellas County, Florida, at a line drawn parallel with mean low tide on the shore line of Pinellas County and nine nautical miles or three marine leagues from shore; that this boundary, fixed by the Constitution, would include within the territorial waters of the State of Florida and within the territorial waters of Pinellas County, Florida, a strip of water lying parallel to and West of mean low tide on the shore line of Pinellas County, Florida, nine nautical miles wide extending East and West.

The Court further finds that under the Agreed Stipulation of Facts, upon which Stipulation the County Judge based his findings and conclusion, verdict and judgment, conclusively establishes the fact without dispute that the Appellant was arrested at a point two marine leagues from mean low tide on the shore line of Pinellas County, Florida, and two marine leagues from the nearest point of land of Pinellas County, Florida, while diving for commercial sponge by the use of ordinary diving apparatus commonly used by deep-sea divers for the purpose of taking or catching commercial sponges from the floor of the Gulf of Mexico, and at the time of his arrest was in the act of and did take commercial sponges at that time and place from the floor of the Gulf of Mexico by the use of said diving apparatus.

The Court further finds that the appellant assigns the following grounds of appeal from the judgment of conviction and sentence of appellant by the said Judge of the County Court in and for Pinellas County, Florida, towit:

1. The Court erred in overruling and denying the defendant's motion to quash the Information filed against him in this cause.

2. The Court erred in holding and determining that the jurisdiction of the Criminal Courts of the State of Florida extends westward from mean low tide on the mainland and

adjacent islands of the State of Florida a distance of three marine leagues or nine nautical miles.

3. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of Florida of 1885, extending three marine leagues West from mean low tide on the West Coast of Florida, did not violate Section One of Article 14 of the Constitution of the United States of America, originally adopted as the Fourteenth Amendment to the Constitution of the United States of America.

4. The Court erred in holding and determining that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were not violative of Article 6 of the Constitution of the United States of America.

5. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were valid and not in violation of Article 2, Section 2, Clause 2, of the Constitution of the United States of America.

6. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were valid and enforceable and not in violation of Article One, Section 10, Paragraph One of the Constitution of the United States of America.

7. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were valid and not in violation of Article One, Section 10, Paragraph 3 of the Constitution of the United States of America.

8. The Court erred in holding that the law of the State of Florida under which the Information was filed against the defendant in this cause, and which law is based upon the boundaries of the State of Florida as established by the Constitution of the State of Florida of 1885 was not in violation of the various treaties made and entered into by the United States of America, each of which is specifically set forth in the Motion to Quash the Indictment.

9. The Court erred in holding that the law under which the Information in this cause was filed against this defendant and which said law is based upon and of necessity relies upon the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, is valid and not in violation of the decisions of the Political and Executive Departments of the Federal Government as to what is and constitutes the extreme limits of the territorial boundaries of the United States of America, as will be more fully shown by reference to the Seventh Ground of the Motion to Quash the Information.

10. The Court erred in holding and determining under the evidence in this cause submitted to the Court, in an agreed statement of facts, the same being filed in this cause, that the alleged offense charged in the Information against the defendant under the agreed statement of facts occurred, was committed, done and performed within the territorial jurisdiction of the Criminal Courts of the State of Florida.

11. The court erred, under the facts shown by this record, in holding and determining that this Court had jurisdiction to try and determine the charge in the Information.

12. The Court erred in his determination and holding that the territorial limits of the State of Florida extend westward from mean low tide on the shore line of the State of Florida and adjacent islands thereto a distance of three marine leagues into the Gulf of Mexico.

13. The Court erred in its order overruling and denying the Motion for New Trial upon each of the grounds therein set forth.

14. The Court erred in his order overruling and denying the defendant's Motion in Arrest of Judgment and each of the grounds set forth in the said motion.

The Court, having inspected the record of proceedings and the evidence contained therein, and the law with relation thereto, is of the opinion that the verdict and final judgment and sentence of the Appellant by the lower Court should be sustained for the following reasons:

This Court is of the opinion and so holds that the jurisdiction of the Criminal Courts of the State of Florida does extend nine nautical miles or three marine leagues from mean low tide on the Coast line of the State of Florida westward into the Gulf of Mexico, notwithstanding the various provisions of the Constitution of the United States set forth in the Grounds of Appeal.

2. The Court is of the opinion and so holds that the boundaries of the State of Florida on the West shore of the State of Florida as fixed by the Constitution of the State of Florida of 1885 extending the western boundary of the State of Florida three marine leagues from mean low tide on the western coast of the State of Florida and adjacent islands is valid and binding on the courts of the State of Florida, notwithstanding the following provisions of the Constitution of the United States, to wit: Article 6, Article 2, Section 2, Clause 2; Article 1, Section 10, Paragraph 1; Article 1, Section 10, paragraph 3.

3. This Court is further of the opinion and holds that the boundary line fixed as the western boundary of the State of Florida by the Constitution of 1885 is valid and binding upon the Criminal Courts of the State of Florida, notwithstanding the various treaties entered into with foreign countries set forth in the record and which said treaties of the United States were entered into pursuant to the authority of the Constitution of the United Sates, and each and all of the same fix the international boundary at one marine league from mean low tide on the shore line of the mainland and adjacent islands.

4. The Court is further of the opinion and holds that the western boundary line of the State of Florida as fixed by the Constitution of the State of Florida of 1885 is valid and binding on the Criminal Courts of the State of Florida, notwithstanding the decisions and political opinions of the Executive Department of the Federal Government announced since 1794 down to the present time to the effect that the extreme limits of the territorial boundaries of the United States of America is and shall be a line parallel with and one marine league from mean low tide on the shore

of the mainland and adjacent islands of the United States, which said line is and constitutes the recognized international boundary line.

WHEREFORE the judgment of conviction of the appellant by the County Court of Pinellas County, Florida, and the sentence imposed on the appellant by the County Court of Pinellas County, Florida, are each hereby affirmed.

Done and Ordered at Clearwater, Pinellas County, Florida, this 30th day of April, A. D. 1940.

JOHN U. BIRD,
*Judge of the Said Court.*

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